



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-03-69-T
Date: 6 January 2011
Original: English

BEFORE THE DUTY JUDGE

Before: Judge Guy Delvoie
Registrar: Mr John Hocking
Decision of: 6 January 2011

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION GIVING REASONS FOR ORDER GRANTING
SIMATOVIĆ DEFENCE MOTION REQUESTING EXTENSION
OF PROVISIONAL RELEASE DURING THE WINTER COURT
RECESS AND OUTLINING THE TERMS OF THE EXTENSION**

Office of the Prosecutor
Mr Dermot Groome

Counsel for Jovica Stanišić
Mr Wayne Jordash
Mr Geert-Jan Alexander Knoops

The Government of the Republic of Serbia
Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

Counsel for Franko Simatović
Mr Mihajlo Bakrač
Mr Vladimir Petrović

Government of the Kingdom of the Netherlands

1. I, Guy Delvoie, acting in my capacity as Duty Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), am seised of the “Urgent Defence Motion Requesting Extension of Provisional Release during the Winter Court Recess”, filed publicly by Counsel for Franko Simatović (“Simatović Defence” and “Accused” respectively) on 30 December 2010 (“Motion”).¹ The Officer of the Prosecutor (“Prosecution”) filed its public response on 4 January 2011 (“Response”),² and the Accused filed a reply to this Response on the same date (“Reply”).³

I. PROCEDURAL HISTORY

2. On 10 December 2010, Trial Chamber I (“Chamber”) granted the Accused’s request for provisional release in part and ordered that he be released to the Government of Serbia for the period of the winter recess, from 17 December 2010 to 6 January 2011 (“Decision of 10 December”).⁴ On 17 December 2010, the Co-Accused, Jovica Stanišić, filed a motion to adjourn the proceedings,⁵ which was joined by the Accused on 17 December 2010 (“Motion for Adjournment of Proceedings”).⁶ On 29 December 2010, the Chamber granted the Motion for Adjournment of Proceedings in part and informed the parties accordingly by email, allowing a two week adjournment in proceedings until the week beginning 24 January 2011. By an order of 5 January 2011 (“Order”),⁷ I granted the request for extension of provisional release until 21 January 2011, providing that the reasoning for granting the Motion was to follow separately. This Decision explains the reasoning behind, and conditions of, the extension of provisional release granted pursuant to the Order.

II. SUBMISSIONS OF THE PARTIES

3. The Simatović Defence contends that, due to bad weather, the provisional release of the Accused to the Government of Serbia was delayed by four days, commencing not on 17 December

¹ Urgent Defence Motion Requesting Extension of Provisional Release during the Winter Court Recess, 30 December 2010.

² Prosecution Response to Urgent Simatović Defence Motion for Extension of Provisional Release, 4 January 2011.

³ Defence Reply to Prosecution Response to Urgent Simatović Defence Motion for Extension of Provisional Release, 4 January 2011.

⁴ Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 10 December 2010.

⁵ Stanišić Motion for Adjournment of Proceedings, 17 December 2010.

⁶ Simatović Defence Joinder in Stanišić Motion for Adjournment of Proceedings, 20 December 2010.

⁷ Order on Simatović Defence Motion Requesting Extension of Provisional Release during the Winter Court Recess, 6 January 2011.

2010 but on 21 December 2010.⁸ Further, the Simatović Defence notes that the Chamber allowed the temporary provisional release of the Accused in order to assist the Simatović Defence in the continued preparation of his defence, and argues that the ongoing presence of the Accused in Belgrade continues to be of importance for this reason.⁹ In addition, the Simatović Defence asserts that the requested extension would not jeopardise the completion of the Prosecution's case, endanger the safety of witnesses or victims, or give rise to a reasonable fear that the Accused will attempt to abscond.¹⁰ The Simatović Defence also observes that the Accused has thus far complied with all Chamber orders,¹¹ and notes that the guarantees provided by the Government of Serbia remain valid for the entirety of any period of provisional release.¹² In light of these considerations, the Simatović Defence requests an extension of the Accused's provisional release until 21 January 2011.¹³

4. In response, the Prosecution submits that the fact that the Accused's ongoing presence in Belgrade is convenient for the Simatović Defence preparations should be accorded little substantive weight, as the Accused is unable to have contact with witnesses or victims, direct access to documents or archives, or hold discussions in respect of his case with anyone other than the Simatović Defence.¹⁴ The Prosecution notes that there is no right to provisional release during recess, as the granting thereof remains discretionary even if the requirements of Rule 65(B) of the Rules of Procedure and Evidence of the Tribunal ("Rules") are met, and asserts that the Simatović Defence has failed to show a pressing need for the Accused to be present in Belgrade.¹⁵ In addition, the Prosecution argues that the seriousness of the charges against the Accused, the likelihood of a long prison term and the fact that the Accused did not voluntarily surrender to the Tribunal should be taken into account in the Trial Chamber's deliberations on the Motion.¹⁶ Further, it submits that the Trial Chamber should consider the Accused's influential role in the region and the potential impact of his ongoing presence in the community upon potential witnesses.¹⁷ Finally, the Prosecution asks that should the Chamber grant the Motion, it consider requiring local authorities to

⁸ Motion, para. 3.

⁹ Motion, para. 2, referring to Decision of 10 December, para. 8; Motion, para. 4.

¹⁰ Motion, para. 6.

¹¹ Motion, para. 5.

¹² Motion, para. 7, referring to Addendum to Defence Motion Requesting Provisional Release during the Winter Court Recess, 1 December 2010 ("Addendum").

¹³ Motion, p. 2, para. 1.

¹⁴ Response, para. 3.

¹⁵ Response, para. 3, referring to Rule 65(B).

¹⁶ Response, para. 4.

¹⁷ Response, para. 5, referring to T. 9710 (10-13) (1 December 2010) (closed session).

provide particular detail on the Accused's compliance with certain of the conditions of provisional release outlined in the Decision of 10 December.¹⁸

5. The Simatović Defence requests leave to reply to the Response.¹⁹ It argues that there is no evidence that the Accused has any influential role in the region, suggesting that the Prosecution's allegations about his impact on potential witnesses are unfounded.²⁰ The Simatović Defence does not, however, object to the Prosecution's request for additional reporting obligations.²¹

III. APPLICABLE LAW

6. The applicable law governing provisional release and provisional release procedures is as set out in the Trial Chamber's previous decisions in this case.²² The same legal principles apply *mutatis mutandis* to a motion for the extension of provisional release.²³

IV. DISCUSSION

7. By virtue of the Order, I granted the Accused's request to extend his provisional release until 21 January 2011.²⁴ Below are reasons for, and conditions of, this extension.

8. When granting the Accused's request for provisional release, the Chamber considered its earlier finding that it was satisfied that, if provisionally released, the Accused would return for trial, and, bearing in mind in addition that the Prosecution is nearing the end of its case, found that there was no reasonable fear that the Accused would attempt to abscond.²⁵ The Chamber also accorded weight to the renewed guarantees given by the Government of Serbia in this regard.²⁶ Further, the Chamber referred to its prior decision that the Accused would not pose a danger to any victim,

¹⁸ Response, para. 6, referring to Rule 65(C); Decision of 10 December, section v, paras 2(d) (vi) ("not to have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice"), (vii) ("not to seek direct access to documents or archives nor destroy evidence") and (viii) ("not to discuss his case with anyone, including the media, other than with his counsel").

¹⁹ Reply, para. 2.

²⁰ Reply, para. 3.

²¹ Reply, para. 4.

²² See Decision of 10 December, para. 4; Decision on Urgent Stanišić Defence Motion for Provisional Release, 31 March 2010 (Confidential), paras 19-21; Decision on Simatović Defence Motion Requesting Provisional Release during the Winter Court Recess, 15 December 2009, paras 11-12; Decision on Simatović Defence Motion Requesting Provisional Release, 15 October 2009, paras 10-12.

²³ *Prosecutor v. Sainović et al.*, Case No. IT-05-87-A, Decision on the Third Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 4 August 2009, para. 5; *Prosecutor v. Sainović et al.*, Case No. IT-05-87-A, Decision on Urgent Defence Motion Requesting Prolongation of Provisional Release of Vladimir Lazarević, 24 June 2009 (confidential), para. 4.

²⁴ Order, p. 1.

²⁵ Decision of 10 December, para. 5, referring to Decision on Simatović Defence Motion Requesting Provisional Release during the Adjournment, 23 March 2010, paras 25-27; Simatović Defence Motion Requesting Provisional Release during the Summer Court Recess, 22 July 2010 ("22 July 2010 Decision").

witness or other person and, absent changed circumstances, was satisfied that this remained the case.²⁷ In addition, the Chamber gave due consideration to the benefits of the Accused's presence in Belgrade in the winter recess for the purposes of the continued preparation of his defence by the Simatović Defence.²⁸

9. When granting the motion pursuant to the Order, I considered that the reasons set out in the Decision of 10 December and pursuant to which the Trial Chamber granted provisional release were sufficient to grant the extension of provisional release requested pursuant to the Motion. In particular, in light of the adjournment of trial proceedings, I considered that the Simatović Defence would continue to benefit from the Accused's presence in Belgrade for the purposes of trial preparation. Further, I considered that the guarantees given by the Government of Serbia are valid for an extension of the provisional release, and I am satisfied that no new circumstance has been brought to the Tribunal's attention since the Decision of 10 December which suggests that the Accused is likely to abscond, or to interfere with or influence potential witnesses.²⁹

10. With respect to the Prosecution's submission that, should the Motion be granted, the Accused be rendered subject to enhanced reporting requirements by the local authorities under Rule 65(C) of the Rules, I note that a monitoring and reporting obligation is already imposed upon the Government of Serbia in respect of the conditions in section v, paragraph 2 (d)(vi),(vii) and (viii) of the Decision of 10 December by virtue of section v, paragraph 3(h) of the Decision of 10 December. As the Prosecution has not persuaded me that any circumstance has changed subsequent to the Decision of 10 December, I do not consider the imposition of any additional obligations to be warranted.

11. Based on all the above, I am satisfied that the extension of provisional release granted pursuant to the Order is appropriate. The conditions set out in the Decision of 10 December continue to apply, throughout the extension until 21 January 2011.

V. DISPOSITION

For the foregoing reasons, pursuant to Rules 54 and 65 of the Rules, I

²⁶ Decision of 10 December, para. 5, referring to Addendum.

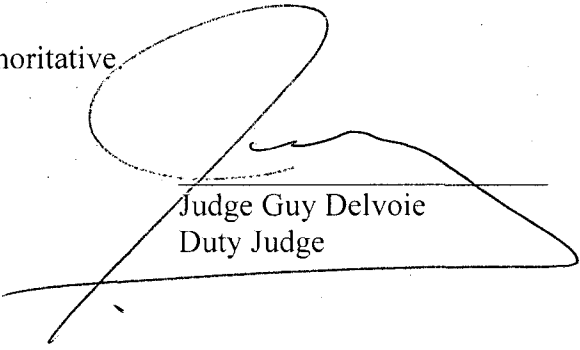
²⁷ Decision of 10 December, para. 6, referring to 22 July 2010 Decision, paras 6-7.

²⁸ Decision of 10 December, para. 8.

²⁹ I note that the reference to transcript by the Prosecution (T. 9710 10-13 (1 December 2010) (closed session)) in support of its submission that the Accused may "directly and/or subtly" influence witnesses appears incorrect, as the testimony contained in this transcript appears irrelevant to the issue. In any event, as the relevant transcript preceded the Decision of 10 December, and as such would have been in the contemplation of the Chamber at the time that this Decision was issued, the conclusion that no new circumstance has been shown by the Prosecution remains unchallenged.

- (1) **GRANT** the Defence leave to reply and accept the Reply on record;
- (2) **EXPLAIN** the reasons why the Motion was granted pursuant to the Order; and
- (3) **ORDER** that all terms and conditions set out in the Decision of 10 December are to remain in effect and apply mutatis mutandis to the amended period of the provisional release.

Done in English and in French, the English being authoritative.



Judge Guy Delvoie
Duty Judge

Dated this sixth day of January 2011
At The Hague
The Netherlands